

1 Joshua B. Swigart, Esq. (SBN 225557)
josh@westcoastlitigation.com
2 David J. McGlothlin, Esq. (SBN 253265)
david@westcoastlitigation.com
3 Hyde & Swigart
4 2221 Camino Del Rio South, Suite 101
5 San Diego, CA 92108-3551
Telephone: (619) 233-7770
6 Facsimile: (619) 297-1022

7 Abbas Kazerounian, Esq. (SBN 249203)
8 ak@kazlg.com
9 Ryan L. McBride, Esq. (SBN 297557)
ryan@kazlg.com
10 Kazerouni Law Group
11 245 Fischer Ave., Suite D1
Costa Mesa, CA 92626
12 Telephone: (800) 400-6808
Facsimile: (800) 520-5523

14 Attorneys for the Plaintiff and
15 Proposed Settlement Class

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **Robert A. Pastor; Scott M. Van**
19 **Horn; Regina M. Florence; and**
20 **William E. Florence III;** on behalf
of himself and all others similarly
21 situated,

22 Plaintiffs,

23 v.

25 **Bank of America, N.A.,**

26 Defendant.

18 **Case No.: 15-cv-03831-VC**

19 **DECLARATION OF DAVID J.**
MCGLOTHLIN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF
NATIONWIDE CLASS ACTION
SETTLEMENT AND
CERTIFICATION OF
SETTLEMENT CLASS

20 **JUDGE: Hon. Vince Chhabria**

DECLARATION OF DAVID J. MCGLOTHLIN

1. I, David J. McGlothlin, hereby declare under penalty of perjury, and pursuant to the laws of the State of California and the United States of America, that the foregoing is true and correct. If called as a witness, I would competently testify to the matters herein from my own personal knowledge.
2. I am a partner of the law firm of Hyde & Swigart and co-counsel of record for Plaintiffs Robert A. Pastor, Scott M. Van Horn, Regina M. Florence, and William E. Florence III (collectively as “Plaintiffs”) in the above-captioned action against defendant Bank of America, N.A. (“Defendant”). I am a member in good standing of the bars in California, Arizona, and Oregon. I am also admitted in every federal district in California and have handled federal litigation in Arizona, Colorado, Georgia, Oregon, and Nevada. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.
3. I am writing this declaration in support of Plaintiff’s Motion for Final Approval of Nationwide Class Action Settlement and Certification of Settlement Class.
4. The Parties have litigated this dispute for three years, as the action was filed in the Northern District of California on August 21, 2015 (*Robert A. Pastor v. Bank of America*, 3:15-cv-03831-MEJ (N.D. Cal.)).
5. Early on in the litigation, the Parties agreed to mediation with an experienced mediator, Judge Infante. At the mediation on July 26, 2016, the Parties reached an agreement for settlement of the class.
6. In September 2016, Plaintiff propounded confirmatory written discovery to Defendant. Specifically, Plaintiff Pastor served on Defendant written discovery consisting of 18 requests for admission, 14 interrogatories, and 27 document requests.

1 7. Furthermore, Class Counsel met and conferred with Defendant on several
2 discovery disputes.

3 8. Once the parties agreed to a framework of a settlement, Class Counsel then
4 took a Fed. R. Civ. P. 30(b)(6) confirmatory deposition as well as sent a
5 second set of written discovery.

6 9. A written Settlement Agreement was finalized and fully executed in April of
7 2017 and a Revised Settlement Agreement and Release that superseded the
8 original Agreement was fully executed by the parties on June 22, 2017.

9 10. It is my opinion that the nationwide settlement class as defined, consisting of
10 approximately 586,801¹ people who had their credit pulled by Defendant,
11 satisfies the requirements of F.R.C.P. 23 because all persons in the
12 settlement class are persons who had their credit pulled by Defendant after
13 the class members' relationship had ended with Defendant. I believe the
14 settlement is fair and reasonable. I also believe the nationwide settlement
15 will have a deterrent effect on future alleged violations of the Fair Credit
16 Reporting Act, 15 U.S.C. § 1681, et seq. ("FCRA") by Defendant and
17 similar businesses.

18 11. There is no intra-class conflict between the class representatives and the
19 other class members. Each class representative understands the case and why
20 it was brought on each of their behalf. Further, Plaintiffs' attorneys are
21 knowledgeable and experienced in class action litigation and in litigation of
22 FCRA claims and are free from conflicts with the class.

23 12. Since preliminary approval, Plaintiffs have continued to serve as adequate
24 Class Representatives by reviewing documents and submitting declarations
25 in support of the Fee Brief; and Plaintiffs support final approval of the
26 proposed settlement.

27
28 ¹ This is the total number of class members and consists of 526,627 individuals in
 Group 1 and 60,174 individuals from Group 2.

13. I have continued to adequately represent the interests of the Class Members and the named Plaintiffs, having, among other things, timely filed the Fee Brief on October 12, 2017 (Dkt. No. 58), dealt with the supplemental notice plan for the Group 2 Class Members, filed a Supplemental Fee Brief on May 21, 2018 (Dkt. No. 80) and assisted with settlement administration and responded to numerous Class Members' inquiries.

RISKS OF CONTINUED LITIGATION

14. The named Plaintiffs and their counsel believe that the claims asserted in the actions have merit.

15. Taking into account the burdens, uncertainty and risks inherent in this litigation, Plaintiffs' counsel have concluded that further prosecution of this action through trial would be protracted, burdensome, and expensive, and that it is desireable, fair, and beneficial to the nationwide settlement class that the action now be fully and finally compromised, settled and terminated in the manner and upon the terms and conditions set forth in the Settlement Agreement.

CLAIMS PROCESS

16. Class Members were provided no less than ninety (90) days to make a claim for a Settlement payout.

17. The procedure for submitting a claim was made as easy as possible – a claim form could be submitted online via the Settlement Website, through IVR or by U.S. Mail.

18. I was informed by the Claims Administrator, KCC, that there were 114,512 valid claims, twenty-five requests for exclusion, and no objections.

19. I am also unaware of any objection from any of the Attorneys General.

I declare under penalty of perjury of the laws of California and the United States that the foregoing is true and correct, and that this declaration was executed in Phoenix, AZ on July 20, 2018.

By: /s/ David J. McGlothlin